IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.1349 of 2005
With
Civil Application NO.317 of 2001

Shri Laxman Dada Jangam — Appellant
Vs.
Shri Manohar Harling Jangam & ors. — Respondents

Mrs.Indrayani Koparkar i/b. Mr.N.P.Deshpande for appellant.

CORAM: B.H.MARLAPALLE, J.

June 19, 2007.

P.C.

1. Heard Mrs.Koparkar with Mr.Deshpande, the learned counsel for the appellant-plaintiff in Regular Civil Suit No.41 of 1985. The said suit was filed for declaration of ownership, mandatory as well as perpetual injunction and for compensation. The suit properties were two different plots admeasuring about 0.2 R. and 0.8 R. in Hissa Nos.17 and 21 respectively and they were known as "Kumbhyache Ambyache Gavthan". The suit was partly decreed and the defendants were permanently restrained from obstructing the possession of the plaintiff whereas the defendant no.1 has been directed to remove the Gadga and Khop, which is erected on the way of the well. The lower Appellate Court agreed with the

findings recorded by the trial Court but did not find any justification in granting permanent restraining order against the defendant nos.2 to 5 and the relief granted by the trial Court was restricted only against the defendant no.1. The plaintiff is, therefore, aggrieved by the judgment and order of the lower Appellate Court dated 27th July 1998 in Civil Appeal No.84 of 1991. Thus the second appeal is waiting for admission for the last about nine years.

2. The suit property was admittedly owned by Mahadling Jangam who died in the year 1939 leaving behind him three sons i.e. Baba, Nana, Dada and daughter-Tanibai. The suit properties were given to Tanibai and she too died leaving behind her surviving son-Krishna. Baba, Nana and Dada were also dead and on the demise of Tanibai the suit property devolved on her son - Krishna. The defendant nos.2 to 5 are the sons of Krishna who is no more and as per the Hindu Succession Act, defendant nos.2 to 5 inherited the suit properties.

3. Both the Courts below have concurrently recorded a finding that the plaintiff could not prove his title over the suit property but his possession

over the same was accepted. The only issue agitated by the plaintiff is the modification of the trial Court's order restraining the scope of the decree only against the defendant no.1.

4. The plaint copy has been placed before me and the evidence of the two witnesses examined on behalf of the plaintiff including Poskar - PW 2 clearly shows that the suit properties are in actual possession of the defendant nos.2 to 5. It was not the case made out by the plaintiff that the defendant nos.2 to 5 were causing interference in his possession of the suit property and they had built a gadga and a khop on the way of the well located in the suit plot and as a result thereof the plaintiff was not able to approach the well. The trial Court, therefore, was justified in directing the defendant no.1 to remove the gadga and the khop. So far as the order of perpetual injunction against all the defendants is concerned, when the plaintiff's own allegation was only against the defendant no.1, there was no reason to pass a sweeping order of permanent injunction against all the defendants. The lower Appellate Court has given cogent reasons as to why the order of injunction against the defendant nos.2

to 5 was not called for. The view taken by the lower Appellate Court cannot be termed as perverse or patently erroneous.

5. No substantial question of law has been made out in this second appeal for consideration of this Court and, therefore, it must fail at the threshold. The second appeal is hereby dismissed in limine and it is made clear that in case defendant nos.2 to 5 or any one of them causes any interruption to the possession of the plaintiff over the suit property, his right to proceed against such persons cannot be taken away by the impugned order.

6. Civil application does not survive and the same stands disposed off.

(B.H.MARL